

EXHIBIT 11

MAZ. AFF.

D. HARTMANN - DIRECT (BY MR. MAZAROLI)

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1 Tell me if you can't hear my question,
2 stop me if you don't understand the question and
3 I'll be happy to repeat it or rephrase it.

4 MR. MAZAROLI: Ms. Reporter, just some
5 logistics issues. Would you, please -- is there
6 anyone else in the room other than the witness and
7 Mr. Hasiak?

8 THE COURT REPORTER: Yes, there is.

9 MR. MAZAROLI: Would you inform us if
10 anyone else enters the room?

11 THE COURT REPORTER: Yes.

12 MR. MAZAROLI: And would you inform us of
13 any kind of off-the-record communication between the
14 witness and anyone else in the room?

15 THE COURT REPORTER: Yes.

16 MR. MAZAROLI: Okay. Ms. Reporter, you
17 have the caption I understand. We generally go by
18 what's called usual stipulations. Do you know what
19 that is?

20 THE COURT REPORTER: I will put down usual
21 stipulations, and I will let you determine what that
22 is.

23 MR. MAZAROLI: Okay.

24 BY MR. MAZAROLI:

25 Q. Mr. Hartmann, please state your full name

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1 Q. Okay. Is Union Pacific Company the parent
2 company for Union Pacific Railroad Company?

3 A. Yes, it is, to my knowledge.

4 Q. Okay. Unless otherwise indicated,
5 reference herein to Union Pacific shall mean Union
6 Pacific Railroad Company, the defendant in this
7 action.

8 Would you briefly describe your employment
9 history with Union Pacific since the start 12 years
10 ago?

11 A. Certainly. I was hired on November 27th,
12 1995 in a position title of supervisor of
13 operations. Actually was employed by the subsidiary
14 company Union Pacific Distribution Services at that
15 time.

16 I'm just referring to my transcript so I
17 can give you the exact dates.

18 I was also then promoted to market analyst
19 for Union Pacific Distribution Services in June of
20 1996. I was then changed positions to another
21 department at Union Pacific Distribution Services as
22 a market analyst. I was then promoted in August of
23 '98 to a sales job for Union Pacific Distribution
24 Services. Promoted again in November of 1999 to
25 product manager international intermodal at which

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1 and your residence address for the record.

2 A. Okay. My name is Daniel Paul Hartmann.
3 Resident address is 436 South 126 Street, Omaha,
4 Nebraska, 68154.

5 Q. All right. Sir, what is your age?

6 A. I'm 42.

7 Q. Okay. And where are you sitting at the
8 present time?

9 A. In a conference room at Union Pacific
10 Center headquarter building.

11 Q. In Omaha, Nebraska?

12 A. In Omaha, Nebraska, that's correct.

13 Q. And do you personally have a domicile
14 within 100 miles of New York City?

15 A. I do not.

16 Q. Okay. By whom are you presently employed?

17 A. Union Pacific Railroad.

18 Q. And how long have you been employed with
19 Union Pacific Railroad?

20 A. For 12 years today actually.

21 Q. And Union Pacific Railroad is the same
22 entity as Union Pacific Railroad Company, a
23 defendant in this action, is that your employer?

24 A. My employer is Union Pacific Company.
25 Railroad is part of that company, correct.

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1 time I moved from the subsidiary company to the
2 railroad company.

3 And then during that period of time up to
4 the present I've been in the same department,
5 international intermodal, the entire time.
6 Currently I'm business director international
7 intermodal.

8 Q. So currently business director?

9 A. Yes, sir.

10 Q. International intermodal?

11 A. That's correct.

12 Q. Okay. Before being employed with Union
13 Pacific Railroad, what was your prior employment?

14 A. I worked for ConAgra Company in Omaha.

15 Q. And what did you do at ConAgra?

16 A. I was in the customer service role working
17 with several food service companies that were
18 customers of ConAgra Foods.

19 Q. Okay. Did that involve transportation at
20 all?

21 A. To some degree it did. I did arrange some
22 trucking services and some basic rail services, but
23 it was with several different railroads and trucking
24 companies.

25 Q. Okay. What about your educational

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1 background, would you give us an overview of that?

2 A. Sure. I have a Bachelor's of Science in
3 business administration with -- from the University
4 of Nebraska at Omaha. I graduated in 1990. And I
5 have some limited credit hours I've obtained as a --
6 in my -- for my MBA program at University of
7 Nebraska at Omaha.

8 Q. Okay. Your present position is business
9 director of international intermodal; is that
10 correct?

11 A. Yes, it is.

12 Q. And does that focus on certain accounts or
13 are you across the board worldwide director of
14 business for intermodal operations?

15 A. I actually am responsible for about
16 roughly half of our business. I have one business
17 manager that works for me that handles some of our
18 accounts that are under my authority, and then I
19 have direct responsibility as well for two accounts
20 under my authority.

21 Q. Is that Costco and Evergreen?

22 A. That's correct.

23 Q. Do you have any direct responsibility for
24 K Line?

25 A. No, I do not.

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1 A. No.

2 Q. At the present time is that something
3 you're involved in?

4 A. No, it's not.

5 Q. Okay. In other words, you don't go out to
6 a derailment site and you did not go to the
7 derailment site relevant to this court case, did
8 you?

9 A. No, sir.

10 Q. Okay. What is the business of Union
11 Pacific Railroad Company?

12 A. The business is to move cargo on our
13 system from origin to destination by rail.

14 Q. What are your day-to-day duties with
15 respect to intermodal operations?

16 A. The operations side I don't have a lot of
17 involvement with since I'm on the marketing side,
18 but I do, of course, work closely with our customer
19 service center which does handle more of the
20 operations side. I do get phone calls from time to
21 time from customers asking questions that are
22 probably operationally related, and I do get
23 involved with train design, things like that if the
24 need be. If a vessel rotation changes and they need
25 a new train service, then I work with operations to

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1 Q. Where is your office on a day-to-day
2 basis, is it at the Omaha headquarters?

3 A. Yes, it is.

4 Q. And do you have your own office?

5 A. I have a cubicle.

6 Q. Okay. And in preparation for today's
7 deposition, did you review any documents to refresh
8 your recollection of the events which are relevant
9 to this court action?

10 A. Yes, I did.

11 Q. And what documents did you review?

12 A. I've reviewed Exhibits 1 through 11.

13 Q. All right.

14 A. Other than that, that's really the -- I
15 think that covers everything I've reviewed.

16 Q. Okay. You just mentioned you were looking
17 at a transcript I believe; is that some employment
18 transcript?

19 A. That's correct.

20 Q. Okay. Your background does not include
21 any scientific expertise with respect to operation
22 of a railroad, does it?

23 A. No.

24 Q. Were you ever involved in investigations
25 of derailments for Union Pacific?

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1 try to coordinate that to meet the needs of the
2 customer.

3 Q. Okay. I mean, you're not out there making
4 cold calls trying to get new customers, are you?

5 A. We do have customers that we don't do as
6 much business with with -- as others, and so there
7 are times where I will go and have, I guess, a cold
8 call type of a meeting, but we don't go out and just
9 knock on doors without having some prior history
10 with the customer.

11 Q. With respect to what you do and your job
12 position at Union Pacific, am I correct that there
13 is a limited number of potential customers?

14 A. That's correct.

15 Q. And you're not -- you're not looking to
16 have -- to start a direct relationship with
17 Coca-Cola or ConAgra, are you, you're looking for
18 the multimodal carriers; is that correct?

19 A. That's correct at this point, yes.

20 Q. And are most of such multimodal carriers
21 foreign entities?

22 A. Most of them are foreign entities as far
23 as their principal headquarters generally is located
24 overseas, yes.

25 Q. Most of the work that -- or the services

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1 that Union Pacific would provide to such customers
2 would involve international shipments; is that
3 correct?

4 A. International shipments would be the
5 majority of the business. There are occasions where
6 we move a domestic load to help a customer position
7 a container back to the West Coast, for example.

8 Q. But most of the shipments, for example,
9 for a customer such as the co-defendant, Evergreen
10 Marine Corporation, would be international
11 shipments; is that correct?

12 A. Most of them would be, yes.

13 Q. Okay. What is -- who is Evergreen Marine
14 Corporation?

15 A. From my perspective, they are one of our
16 international intermodal customers. We are a vendor
17 of theirs to provide transportation services to move
18 marine containers intermodally.

19 Q. Okay. And what does intermodal mean?

20 A. Intermodal is where we -- a customer
21 brings us a container to one of our facilities or we
22 load it at their facility. A 40-foot container
23 generally, sometimes 20-foot container, sometimes
24 45-foot containers loaded on a railcar. Then we
25 move the -- that railcar to one of our terminals via

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1 train service where we unload it onto a chassis and
2 then it's available for outgate by the customer.

3 Q. What does the word intermodal mean, does
4 that mean -- well, what does it mean?

5 A. That means generally more than one mode of
6 transportation.

7 Q. Such as ocean and rail?

8 A. From a railroad perspective it's more
9 truck and rail.

10 Q. Okay. But with respect to your
11 international customers such as Evergreen, would the
12 word intermodal include ocean -- in the overall
13 sense. I realize that UP, Union Pacific does not
14 own ships, but when it's used in the context of a
15 customer such as Evergreen Marine Corporation, would
16 the word intermodal contemplate also ocean carriage?

17 A. I can't be certain of that. I don't know
18 for sure how they would refer to a train move with
19 us.

20 Q. Okay. Well, what is the business of
21 Evergreen Marine Corporation?

22 A. To my knowledge, it's to transport cargo
23 overseas from manufacturer to customer. It
24 generally involves a voyage of some sort over the
25 ocean, and in some cases it can be a local delivery

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1 once it arrives at the port, or they may subcontract
2 rail service or truck service to deliver it inland.

3 Q. Okay. So is it your understanding that
4 Evergreen Marine Corporation provides multiple
5 services, including ocean transport and rail
6 transport to its customers?

7 A. That's correct.

8 Q. And you -- you and Union Pacific fit in in
9 this multimodal scope by providing rail services; is
10 that correct?

11 A. Yes.

12 Q. All right. How long have you been
13 involved with Evergreen Marine Corporation
14 personally?

15 A. Personally since about 2003.

16 Q. Okay. And how did that involvement begin,
17 was there a predecessor whose job you took over?

18 A. That's correct.

19 Q. Okay. How long has Evergreen Marine
20 Corporation been a customer of Union Pacific
21 Railroad?

22 A. That I don't know.

23 Q. Okay. Did the relationship start in 2003?

24 A. No, it did not.

25 Q. Do you have any idea how long it had been

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1 in existence before 2003?

2 A. I know it's been in existence at least ten
3 years from now.

4 Q. Okay. You mentioned that you -- you have
5 two accounts that you are directly responsible for,
6 Costco and Evergreen; is that correct?

7 A. Yes, it is.

8 Q. Do you maintain a file for each of those
9 companies?

10 A. I maintain several files for each one,
11 yes.

12 Q. And what would those files be, what
13 categories?

14 A. The categories would include contract
15 negotiation material, it would include claims
16 information, it could include some operational
17 information, customer satisfaction survey
18 information, those types of things.

19 Q. With respect to contract negotiation
20 material, are you personally involved or have you
21 been involved with contract negotiations with
22 Evergreen?

23 A. Yes, I have.

24 Q. And how is that involvement, what exactly
25 was your role?

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1 A. The way -- when we negotiate a contract,
2 it tends to be several layers of marketing involved.
3 Generally it's vice president, assistant vice
4 president, and then the account manager which would
5 be me in this case. So my involvement would be to
6 help strategize what our pricing structure is going
7 to be, what the terms and conditions of the contract
8 are going to be, communicating that information with
9 the customer. When we receive their response,
10 counterproposal, if you will, then we will address
11 that internally and then try to counter that and go
12 through the negotiation process in that way.

13 Q. Okay. Do you get involved with the
14 wording of contracts with customers such as
15 Evergreen?

16 A. I do to some degree. And then it's always
17 reviewed by our law department prior to submittal to
18 the customer.

19 Q. Okay. Do the contracts, if you know, vary
20 from customer to customer as far as substantive
21 details, in other words, aside from the rates and
22 volumes?

23 A. They vary to some degree between
24 customers, yes.

25 Q. Okay. Are you involved in calculation of

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1 Q. You referred to MITA; is that what we have
2 seen in this case as the Master Intermodal
3 Transportation Agreement?

4 A. Yes, it is.

5 Q. What is that document?

6 A. That's a document of rules and guidelines
7 that govern intermodal shipments on Union Pacific
8 Railroad.

9 Q. Okay. Has it always been called Master
10 Intermodal Transportation Agreement?

11 A. No, it has not.

12 Q. What was it called before it became what
13 we will refer to as MITA, M-I-T-A?

14 A. Right. I believe it was called Circular
15 20.

16 Q. Okay. And was it referred to as anything
17 else prior to being referred to as Circular 20?

18 A. Not to my knowledge, but I can't be
19 certain.

20 Q. So from Circular 20 -- let me -- first
21 there was Circular 20, and then there was the Master
22 Intermodal Transportation Agreement, also known as
23 MITA. Did anything come after MITA?

24 A. Today it's called MITA 2 or MITA 2.

25 Q. Okay. When did Circular 20 end?

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1 freight charges for a customer such as Evergreen
2 Marine Corporation?

3 A. Yes, I am.

4 Q. And how are freight charges negotiated,
5 does UP call the shots or is the customer such as
6 Evergreen insisting on a certain figure?

7 A. We negotiate back and forth so we -- it
8 would be just like purchasing a vehicle in most
9 cases where, you know, we have a price in mind, the
10 customer may or may not agree to that price, they
11 may offer us feedback, in which case we take that
12 into consideration, and if we have what we would
13 consider room in our pricing, then we may meet that
14 customer's request to try to complete the
15 negotiations.

16 Q. Okay. Have you been involved in drafting
17 Evergreen Marine Corporation's bill of lading terms?

18 A. No, I have not.

19 Q. Does Evergreen Marine Corporation's bill
20 of lading terms and conditions, is it relevant to
21 what you do?

22 A. It's relevant in that our MITA agreement
23 refers to that as far as the ocean bill of lading is
24 part of our -- becomes part of our position if you
25 will.

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1 A. I can't be certain of that. I don't know.

2 Q. Do you know when MITA, M-I-T-A, began?

3 A. No, I don't know that. I don't know the
4 exact date of that, no.

5 Q. All right. Do you know if there was a
6 MITA 1 before MITA 2?

7 A. I don't know for certain.

8 Q. Okay. Do you know -- can you tell us the
9 basic differences between what you refer to as
10 Circular 20 and the Master Intermodal Transportation
11 Agreement referred to as MITA?

12 A. From what I know, the document simply
13 is -- evolves over time, and I don't believe there
14 was a major change from Circular 20 to MITA. I
15 believe that was just a name change that we did
16 internally.

17 Q. Okay. Was there a major substantive
18 change from Master Intermodal Transportation
19 Agreement, or MITA, to MITA 2?

20 A. Not to my knowledge.

21 MR. MAZAROLI: Ms. Reporter, are you
22 getting that; that's M-I-T-A?

23 THE COURT REPORTER: Yes, I am.

24 BY MR. MAZAROLI:

25 Q. Not to your knowledge?

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- 1 A. No.
- 2 Q. And you think that was just a name change
- 3 as well?
- 4 A. I think so.
- 5 Q. Was the name change done in coordination
- 6 with Evergreen or did Union Pacific do it on its
- 7 own?
- 8 A. No, that was just done independently.
- 9 Q. By Union Pacific?
- 10 A. Correct.
- 11 Q. In other words, Union Pacific doesn't need
- 12 Evergreen's permission to change Circular 20 or
- 13 MITA?
- 14 A. That's correct.
- 15 Q. Does Union Pacific send a notice to a
- 16 customer such as Evergreen for each and every change
- 17 in rules such as Circular 20 or MITA or MITA 2?
- 18 A. I don't believe a notification is issued.
- 19 We make a change and then it is updated on our
- 20 website for customers to access.
- 21 Q. Okay. And customers would be intermodal
- 22 carriers such as Evergreen; is that correct?
- 23 A. That would be one base of our customers,
- 24 yes.
- 25 Q. Okay. What was the other base of your

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- 1 A. Yes.
- 2 Q. Okay. In April and March and April of
- 3 2006, which we'll refer to as the spring of 2006, do
- 4 you recall if there was any change in title that
- 5 came into effect at about that time with respect to
- 6 these Circular 20 or MITA type contracts -- not
- 7 contracts, rules you referred to?
- 8 A. Not that I'm aware of, no.
- 9 Q. With respect to your day-to-day activities
- 10 with Evergreen Marine Corporation, who do you
- 11 communicate with in the United States?
- 12 A. I communicate with their U.S. headquarters
- 13 in Jersey City, New Jersey.
- 14 Q. And is there any individual in particular?
- 15 A. There are several. The main individual
- 16 that I work with is a gentleman by the name of
- 17 Patrick Chen.
- 18 Q. C-H-E-N?
- 19 A. That's correct.
- 20 Q. What is his title?
- 21 A. I don't know his title. Well, he's -- I
- 22 do know his title, I take that back. He's a junior
- 23 vice president, but I don't know of what division.
- 24 I think it's intermodal logistics.
- 25 Q. And anyone else that comes to mind, sir?

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- 1 customer?
- 2 MR. HASIAK: David, just for
- 3 clarification, you're asking this question of him
- 4 about our current practices or the practices in
- 5 place at the time?
- 6 MR. MAZAROLI: Good point. I will try and
- 7 clear that up. Thank you.
- 8 MR. HASIAK: Okay.
- 9 BY MR. MAZAROLI:
- 10 Q. Did your -- the procedure that you have
- 11 discussed concerning changes that might be made from
- 12 time to time in Circular 20, MITA or MITA 2 type
- 13 contracts, did that also -- was that also how it was
- 14 done in March and April of 2006?
- 15 A. I can't be certain. I believe that's
- 16 true.
- 17 Q. Okay. What was your position with Union
- 18 Pacific in March and April of 2006?
- 19 A. That was -- I was a business director
- 20 intermodal at that time, my current position.
- 21 Q. All right. And you had the same
- 22 day-to-day duties you just described; is that right?
- 23 A. Yes, sir.
- 24 Q. Okay. And Evergreen was one of your
- 25 direct responsibilities?

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- 1 A. I work with Peter Wan, W-A-N, and he's an
- 2 assistant manager in the logistics division. I work
- 3 with Herbert Lin, L-I-N. He's a vice president.
- 4 Q. All right.
- 5 A. And I work with Roger Chern, C-H-E-R-N.
- 6 Q. Okay. What type of discussions do you
- 7 have with these type of people; is it mostly sales,
- 8 marketing, customer service type issues?
- 9 A. Yes, it is.
- 10 Q. Does it ever involve claims?
- 11 A. Very rarely.
- 12 Q. Rarely. Okay.
- 13 A. Yes.
- 14 Q. During the course of your employment with
- 15 Union Pacific, have there been any major casualties,
- 16 such as derailments, involving Evergreen Marine
- 17 Corporation shipments?
- 18 A. There have been some, yes.
- 19 Q. Okay. Do you know them by name of
- 20 derailment or could you just give us a brief
- 21 rundown?
- 22 A. I don't have that information.
- 23 Q. All right. The present case involves a
- 24 derailment on or about April 5th, 2006 at Higginson,
- 25 Arkansas; are you aware of that?

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- 1 A. Yes, I am.
- 2 Q. And were you involved in any way with that
- 3 derailment before today's deposition?
- 4 A. The only involvement I had was I was
- 5 copied in on some of the correspondence between our
- 6 Palestine claims office and Evergreen in regards to
- 7 the condition of the containers that they had that
- 8 were involved in the derailment.
- 9 Q. Okay. And you were copied in. Who were
- 10 those communications from at UP?
- 11 A. Those were from our claims office in
- 12 Palestine.
- 13 Q. Okay. And who were they addressed to at
- 14 Evergreen?
- 15 A. I know that they were addressed to Patrick
- 16 Chen and Peter Wan, among others, and I can't be
- 17 certain who else would have been on that at that
- 18 time.
- 19 Q. Okay. Now, that has to do with damage to
- 20 equipment; is that correct?
- 21 A. It pertains -- I believe it's in one of
- 22 the exhibits is an example of what I was partial to.
- 23 Q. Okay. I see what you mean.
- 24 A. Okay.
- 25 Q. Did you receive or transmit any e-mails

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- 1 with text concerning the Higginson, Arkansas
- 2 derailment?
- 3 A. Not that I can recall, no.
- 4 Q. Okay. Were you copied in on any
- 5 communications that discussed the cause of the
- 6 derailment?
- 7 A. No, I was not.
- 8 Q. Did Evergreen present, to your knowledge,
- 9 any claims to Union Pacific Railroad for damage to
- 10 equipment?
- 11 A. Not to my knowledge because I'm not
- 12 involved in that side of it.
- 13 Q. Okay. Did Evergreen ask your assistance
- 14 in terms of any particular customer's cargo that was
- 15 involved in this Higginson, Arkansas derailment?
- 16 A. No, sir.
- 17 Q. Okay. And you at no time attended the
- 18 derailment site; is that correct?
- 19 A. That's correct.
- 20 Q. And you did not personally see any of the
- 21 cargo?
- 22 A. No, I did not.
- 23 Q. Is it your understanding that with respect
- 24 to the Higginson, Arkansas derailment -- I withdraw
- 25 that question.

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- 1 The derailment at Higginson, Arkansas, did
- 2 that involve a Union Pacific train?
- 3 A. Yes, it did.
- 4 Q. How many Union Pacific trains?
- 5 A. One for sure. I don't recall the detail.
- 6 Q. Okay. The train that derailed, was that
- 7 train ITIMNX 01?
- 8 A. Let me double check my documents real
- 9 quick.
- 10 Yes, sir.
- 11 Q. Do you know how many intermodal containers
- 12 were involved in the derailment; in other words, how
- 13 many containers were damaged or upended in some way?
- 14 MR. HASIAK: And, David, just so we're
- 15 clear, you're talking containers, not railcars or --
- 16 MR. MAZAROLI: Thank you, Ray, I'll clear
- 17 that up.
- 18 MR. HASIAK: Okay.
- 19 THE WITNESS: What my understanding is is
- 20 the Exhibit 11 is a document that would show all of
- 21 the containers that were involved in the derailment.
- 22 MR. MAZAROLI: Okay. Let's look at that.
- 23 Reporter, would you mark Exhibit 11,
- 24 that's two pages Bates No. A 00026 and A 00027.
- 25

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- 1 (Exhibit No. 11
- 2 marked for identification.)
- 3 BY MR. MAZAROLI:
- 4 Q. Mr. Hartmann, can you identify Exhibit 11?
- 5 A. Yes, sir. It's a derailment master
- 6 spreadsheet identifying the containers involved with
- 7 the derailment of the ITIMNX 01.
- 8 Q. Who prepared this document?
- 9 A. The claims office in Palestine, Texas.
- 10 Q. That's the claims office of Union Pacific?
- 11 A. Yes, sir.
- 12 Q. Okay. Do you know when it was prepared?
- 13 A. I do not know the exact date. It would be
- 14 shortly after the derailment occurred.
- 15 Q. Okay. I notice on Exhibit 11 the shipper
- 16 is shown as Evergreen throughout. Was train ITIMNX
- 17 01 a dedicated Evergreen train?
- 18 A. Yes, it was.
- 19 Q. What does that mean?
- 20 A. That means that the train originated --
- 21 well, was loaded and originated at Evergreen's
- 22 Marine terminal in Los Angeles, California.
- 23 Q. Okay.
- 24 A. And it would carry predominantly Evergreen
- 25 cargo. There could be occasions where we may put

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1 other customers' cargo on there if there was enough
2 room, but it tends to be primarily Evergreen when
3 it's a train coming from the marine terminal.

4 MR. MAZAROLI: All right. Ms. Reporter,
5 would you mark Exhibit 10, please.

6 (Exhibit No. 10
7 marked for identification.)

8 BY MR. MAZAROLI:

9 Q. Mr. Hartmann, can you identify Exhibit
10 No. 10, which is a document paginated 1 through 35
11 and entitled Union Pacific Railroad Company train
12 list, Issue No. 1?

13 A. Yes, I can.

14 Q. What is this?

15 A. This is a Union Pacific train consist
16 showing the makeup of the train, designated train.

17 Q. What is the purpose of this document?

18 A. The purpose -- well, it's a multi purpose
19 document I'm sure, but it basically identifies
20 everything associated with the train as far as
21 locomotives, cars, containers, types of things of
22 that sort. It's an identifying document of that
23 train.

24 Q. Am I correct that just scanning through
25 the 35 pages, each of the shipments appears to be

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1 that correct?

2 A. They would be intermodal containers,
3 intermodal units, yes.

4 Q. And they originated someplace overseas?

5 A. Yes.

6 Q. Okay. So they were international
7 shipments?

8 A. Yes.

9 Q. Okay. And while this train consist that's
10 marked as Exhibit 10 relates to the makeup of the
11 train which moved along the Union Pacific rail route
12 in question, the shipments, the Evergreen shipments
13 in question started someplace overseas; is that
14 correct?

15 A. That's correct.

16 Q. Who loaded the containers onto the
17 railcars for this train identified in Exhibit 10?

18 A. That would be Evergreen's marine terminal,

19 Q. Okay. In Los Angeles, sir?

20 A. Yes, sir.

21 Q. And does Evergreen do that on its own or
22 is it in coordination with Union Pacific?

23 A. They do that on their own at the terminal.

24 Q. Okay. Is Union Pacific present when the
25 containers are loaded onto the railcars?

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1 identified as an Evergreen shipment?

2 A. Doing a quick scan, yes, I would agree,
3 yes, sir.

4 Q. Now, you mentioned railcars and you
5 mentioned containers, and I note that Exhibit No. 10
6 also refers to locomotives.

7 A. That's correct.

8 Q. Page 2, for example.

9 Were the containers Union Pacific
10 equipment?

11 A. No, they are not.

12 Q. Whose equipment was it?

13 A. Those would be Evergreen Marine's
14 container -- or equipment.

15 Q. Okay. Very good. And the railcars, were
16 those Union Pacific's equipment?

17 A. Those are leased by Union Pacific in most
18 cases.

19 Q. All right.

20 A. Yes.

21 Q. And what about the locomotives?

22 A. Those are owned or leased by Union
23 Pacific.

24 Q. Am I correct that the container numbers
25 referred to on the consist were intermodal units; is

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1 A. No, sir.

2 Q. Does Union Pacific verify the load plan
3 for a train such as this one?

4 MR. GUTTERMAN: Are you talking about at
5 the time of the incident?

6 MR. MAZAROLI: In general procedures.

7 THE WITNESS: I can't be certain of that.
8 I do know we -- we do air tests, things of that
9 sort, before the train is departed.

10 BY MR. MAZAROLI:

11 Q. Okay. In connection with a intermodal
12 train movement such as train ITIMNX 01, who decides
13 what intermodal container goes in which car?

14 A. The -- in this case the marine terminal
15 would decide that.

16 Q. And who is the marine terminal acting for?

17 A. For Evergreen Marine.

18 Q. Okay. Who checks the weight of intermodal
19 containers which are loaded on a train such as
20 ITIMNX 01?

21 MR. HASIAK: Do you know?

22 THE WITNESS: I don't know, no.

23 BY MR. MAZAROLI:

24 Q. Do you know the procedure for inspecting
25 containers which are loaded on a Union Pacific train

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1 such as ITIMNX 01?

2 A. No, I do not.

3 Q. Does a dedicated train such as this one
4 referred to in Exhibit 10 move at the direction of
5 your customer Evergreen?

6 MR. GUTTERMAN: Are you talking about
7 routing?

8 BY MR. MAZAROLI:

9 Q. One thing would be routing, the other
10 thing would be speed. What about with respect to
11 routing, sir?

12 A. Union Pacific would be responsible for
13 routing the train to destination. Evergreen would
14 not have any input in that.

15 Q. What input would Evergreen have with
16 respect to the movement of a train such as ITIMNX
17 01?

18 A. They would have involvement as to when
19 they would release the train to us at the LA
20 terminal when the train is ready, and then they
21 would call us to depart the train.

22 Q. Referring to Exhibit 10, and starting on
23 Page 4, there is reference to XG077; what is that,
24 sir?

25 A. I'm sorry, can you repeat that, please?

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1 gravity into another track or into another train so
2 they can build a train, sort a train. We do not
3 hump intermodal trains by nature.

4 Q. Why not?

5 A. Because it can be damaging to goods, the
6 jarring could be damaging to goods.

7 Q. When a train such as the train identified
8 in Exhibit 10 is loaded by Evergreen, are the
9 containers opened?

10 A. I don't know.

11 Q. Does Union Pacific ever open containers,
12 intermodal containers?

13 A. Yes.

14 Q. When is that?

15 A. When they do a spot inspection, random
16 inspection they may open a container.

17 Q. How often is that done as a matter of
18 procedure?

19 A. I don't know.

20 Q. Is it your testimony that Union Pacific
21 can do that whenever it wants?

22 A. Yes, sir.

23 Q. Okay. Exhibit 10 is a document generated
24 by Union Pacific; is that correct?

25 A. Yes, it is.

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1 Q. XG077 is referred to on Page 4 and the
2 following pages.

3 A. On Exhibit 10?

4 Q. Yes, sir.

5 MR. GUTTERMAN: The bottom of each of the
6 pages you'll see many pages where it mentions XG077,

7 THE WITNESS: Okay.

8 BY MR. MAZAROLI:

9 Q. Do you know what that refers to?

10 A. I believe that's a CIRC seven code
11 designating a location on the railroad.

12 Q. Okay. And what does TOFC mean?

13 A. That's an acronym for trailer on flatcar.

14 Q. Okay. And what about LP1A?

15 A. I do not know what that is.

16 Q. Okay. And "do not hump," what does that
17 mean?

18 A. Well, that's a designation that this train
19 is not to go into a hump yard to be sorted or
20 switched.

21 Q. What is a hump yard?

22 A. A hump yard is a gravity -- it's where you
23 take a car or a train -- or train into a yard and
24 they sort it by gravity so it will -- they sort it
25 into various tracks, it's on a hill and it goes by

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1 Q. A copy given to Evergreen, your customer?

2 A. I don't know if a copy was given to
3 Evergreen.

4 Q. Sir, referring back to Exhibit 11, this
5 court case involves shipments carried in containers
6 TRIU 5559381 and container UGMU 8062288; are you
7 aware of that?

8 A. Yes.

9 Q. And do you know what was contained inside
10 those containers when it was carried on Union
11 Pacific's train number ITIMNX 01?

12 A. The commodity description is auto parts.

13 Q. And do you know who the owner of the auto
14 parts was?

15 A. I do not.

16 Q. Do you know who ASMO Limited is?

17 A. No, sir, I do not.

18 Q. Do you know who ASMO North Carolina is?

19 A. No.

20 Q. Does Union Pacific as a matter of
21 procedure at present get involved with Evergreen's
22 direct customers?

23 A. No, we do not.

24 Q. Union Pacific deals with Evergreen and
25 Evergreen deals with its customers; isn't that

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1 correct?

2 A. Yes, sir.

3 Q. And that was true in the spring of 2006 as

4 well?

5 A. Yes, it is.

6 Q. Back to Exhibit 11, am I correct that

7 containers UGMU 806228 is mentioned on the first

8 page of the spreadsheet on line -- the second line

9 90?

10 A. Yes, sir.

11 Q. So that container was one of the

12 containers damaged in the derailment?

13 A. Yes, sir.

14 Q. Okay. And on that line on Page 1 of

15 Exhibit 11, the fourth column from the right it

16 states "on side"; what does that mean?

17 A. I believe those are comments that were

18 input by the claims office as a result of the

19 inspection at the derailment site.

20 Q. Okay.

21 A. So my understanding is that that means the

22 container was on its side at the site.

23 Q. So as a result of the derailment the

24 container turned over or somehow ended up on its

25 side?

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1 Exhibit 11, sir, in slot -- the second slot 96, all

2 the way to the left there is reference to container

3 TRIU 555938; do you see that?

4 A. Yes, sir.

5 Q. Okay. And then again in the column for

6 that container, fourth column from the right, it

7 also states it's on side, door split open. Does

8 that mean that this container as well as a result of

9 the derailment was turned over on its side?

10 A. That would be my understanding.

11 Q. And the next column to the right for

12 container TRIU 555938 refers to a transload

13 container EMCU 100285; is that correct?

14 A. Yes, sir.

15 Q. So the auto parts in the TRIU container

16 were also transloaded into a replacement container;

17 is that correct?

18 A. That's correct.

19 Q. And your understanding is that would have

20 been done by or on behalf of Union Pacific?

21 A. Yes, sir.

22 Q. Okay. And in connection with both of the

23 containers that we -- which are the subject of this

24 court case, is it your understanding that the

25 contents of the original container were physically

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1 A. That would be my understanding, yes.

2 Q. And the next column to the right there is

3 reference to another container number, EMCU 943524

4 under the column entitled transfer container. Do

5 you have an understanding as to why that container

6 is mentioned?

7 A. That would be -- yes. That's because they

8 would have taken the goods from the container that

9 was damaged and loaded those into this container for

10 furtherance to destination.

11 Q. All right. So the auto parts that were

12 originally carried in container UGMU 806228 were

13 transloaded into a container EMCU 943524; is that

14 correct?

15 A. That's correct.

16 Q. And who did that?

17 A. I don't know who did that.

18 Q. Okay. Is it your understanding that it

19 was done by or on behalf of the railroad, Union

20 Pacific?

21 A. That's my understanding, yes.

22 Q. And that's part of the what we call post

23 derailment procedure; isn't that correct?

24 A. I would agree, yes.

25 Q. All right. Thank you. The second page of

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1 removed from the derailment damaged containers into

2 replacement containers for on carriage?

3 A. That would be my understanding, yes.

4 Q. And that would involve physically handling

5 the cargo from the damaged container and placing it

6 inside the replacement container?

7 A. Yes, it would.

8 Q. Now, referring to Exhibit 10, I'll guide

9 you through this, at Page 27 of Exhibit 10, top

10 third, there is reference to container UGMU 806228.

11 A. Yes, sir.

12 Q. Okay. And that is one of the two

13 containers of auto parts which are the subject of

14 this court case; is that correct?

15 A. That's correct.

16 Q. And that container, according to

17 Exhibit 10, the consist, was carried on train ITIMNX

18 01?

19 A. That's correct.

20 Q. That train derailed at Higginson,

21 Arkansas; is that correct?

22 A. Yes, sir.

23 Q. Now, Page 29 of Exhibit 10, sir, second

24 line from the top --

25 A. Yes.

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- 1 Q. -- there is reference to container TRIU
2 555938; do you see that?
- 3 A. Yes, sir.
- 4 Q. And that is the second container of auto
5 parts which is the subject of this lawsuit; is that
6 correct?
- 7 A. That's correct.
- 8 Q. And according to this consist we've marked
9 as Exhibit 10, that shipment of auto parts was also
10 carried on train ITIMNX 01; is that correct?
- 11 A. Yes, it is.
- 12 Q. And train ITIMNX 01 derailed at Higginson,
13 Arkansas; is that correct?
- 14 A. That's correct.
- 15 Q. And both of those two shipments of auto
16 parts sustained some form of damage as a result of
17 the derailment; is that your understanding?
- 18 A. Yes, sir.
- 19 Q. Is this -- Exhibit 10, it's a regular
20 business record of Union Pacific Railroad?
- 21 A. It's more used in our operations side.
- 22 Q. But a consist is something that's
23 generated when there is such an intermodal train as
24 this one?
- 25 A. Yes, sir.

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- 1 A. Well, I know the information is in here
2 but I'm not real familiar with it. I believe it to
3 be 147. I'm just referring to Page 32. The total
4 says 147 at the top. I believe that's a container
5 count.
- 6 Q. I see. Thank you. And that would be
7 Evergreen intermodal containers?
- 8 A. Based on my scan of this document, yeah,
9 if they are all Evergreen, yes.
- 10 Q. You are aware that Evergreen provides
11 transportation services for companies in the
12 automotive industry in the United States; are you
13 aware of that?
- 14 A. Yes, sir.
- 15 Q. And how are you aware of that?
- 16 A. I'm aware of it through various
17 communications I've had, phone calls, things like
18 that.
- 19 Q. Okay. Does the fact that Evergreen has
20 customers in the automotive industry come into play
21 with respect to scheduling purposes for a dedicated
22 Evergreen train?
- 23 A. We don't do anything special because of
24 the fact that they carry auto parts unless they
25 would ask us to do something.

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- 1 Q. How many cars did train ITIMNX 01 have at
2 the time of the derailment; can you tell from
3 Exhibit 10, sir?
- 4 A. I cannot tell, no.
- 5 Q. Okay. How many containers was it
6 carrying? And I direct your attention to Page 32.
- 7 A. Yes.
- 8 Q. There is some figures there.
- 9 A. Right.
- 10 Q. It says at the bottom, summary of car
11 types, 97 double stack and one spine.
- 12 A. Right.
- 13 Q. What is a double stack car?
- 14 A. Double stack car is an intermodal car that
15 allows for loading of two containers, one on top of
16 another.
- 17 Q. Does each car carry a total of two 40-foot
18 units, one stacked on top of the other?
- 19 A. That's a -- that would be a perfect what
20 we consider slot utilization, yes, but it could also
21 carry two, 20-foot containers on the bottom well and
22 one 40-foot container on the top.
- 23 Q. All right. Got you. And how many
24 containers were -- intermodal containers were
25 carried on this train, can you tell from this?

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- 1 Q. In other words, the concept of just in
2 time inventory for automotive assemblers or
3 manufacturers, such as Toyota, for example, does
4 that synchronize just in time inventory procedure
5 relevant for Union Pacific's scheduling purposes?
- 6 A. If Evergreen asked us for a specific
7 schedule to try to obtain or design a specific
8 schedule to assist them in that effort, then we
9 would make our best effort to do so.
- 10 Q. Would you speed up a train because a ship
11 is late?
- 12 A. My -- I believe that answer to be no.
- 13 Q. All right. Referring to Page 30 of
14 Exhibit 10, at the top there is reference to high
15 value loads?
- 16 A. Yes, sir.
- 17 Q. What does that refer to?
- 18 A. Well, I can't be certain on the consist.
19 That's the first time I've seen that. I can tell
20 you what I know of a program we have that handles
21 high value loads if that would be helpful.
- 22 Q. No, I was -- what I was focusing on was
23 who would provide the information for the consist as
24 to whether or not they are high value loads?
- 25 A. I can't be certain of that.

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1 Q. Okay. What information does Evergreen
2 give Union Pacific before a train such as ITIMNX 01
3 is assembled?

4 A. They would give us information required by
5 our MITA rules on a rail waybill.

6 Q. Okay. What is a rail waybill?

7 A. That's a -- I would describe it as a set
8 of -- a set of information that is submitted by the
9 customer to us designating container number,
10 commodity code, various pieces of information that
11 instruct us on what to do with that container.

12 Q. Okay.

13 A. How to move that container.

14 MR. MAZAROLI: Ms. Reporter, would you
15 mark Exhibit 6 and Exhibit 7, each of which are two
16 pages.

(Exhibit Nos. 6 - 7
marked for identification.)

19 BY MR. MAZAROLI:

20 Q. Mr. Hartmann, are you doing okay? If you
21 ever want to take a break, tell us.

22 A. Thank you. I'm okay right now.

23 Q. Exhibit 6, can you identify that?

24 A. This is the first time I've seen this, so
25 I'm not familiar with it, no.

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1 A. Yes.

2 MR. MAZAROLI: Okay. Let's mark as
3 Exhibit 8 and Exhibit 9 the two documents so
4 designated, Ms. Reporter.

(Exhibit Nos. 8 and 9
marked for identification.)

7 BY MR. MAZAROLI:

8 Q. Mr. Hartmann, can you identify Exhibit
9 No. 8, Bates No. A00131?

10 A. Yes. This is a -- what we call an online
11 cycle inquiry.

12 Q. And what about Exhibit 9, which is Bates
13 No. A00128; is that also an online cycle inquiry?

14 A. Yes, sir.

15 Q. And would you tell us what these documents
16 are?

17 A. These documents are what we consider a
18 trace or the movement record of a container on the
19 railroad.

20 Q. I see. It's kind of a tracking record?

21 A. Yes, it is.

22 Q. And am I correct that Exhibit 8 refers to
23 container TRIU 555938?

24 A. Yes, sir.

25 Q. And it refers to a WB NUMB 530157?

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1 Q. What about Exhibit 7?

2 A. Same, I'm not aware of -- this is not a
3 document I see in my day-to-day job.

4 Q. Can you identify what a -- the waybill you
5 just mentioned looks like?

6 A. Well, we receive waybills from Evergreen
7 via EDI --

8 Q. Okay.

9 A. -- a transmittal, so that's -- I've seen
10 what that looks like. I believe this is a rail
11 waybill.

12 MR. HASIAK: You believe or you know it?

13 THE WITNESS: I don't know that for sure.

14 BY MR. MAZAROLI:

15 Q. All right, sir, if you don't know.

16 Exhibit 6 pertains to container TRIU
17 555938, and Exhibit 7 contains -- pertains to
18 container UGMU 806228; do you see that?

19 A. Yes.

20 Q. And those are the two shipments of auto
21 parts we were previously discussing which are the
22 subject of this court case?

23 A. Correct.

24 Q. Is it your understanding that Union
25 Pacific generated waybills for these two shipments?

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1 A. Right.

2 Q. What --

3 A. That's abbreviation for waybill number.

4 Q. So that's a further indication that a
5 waybill was generated for container TRIU 555938?

6 A. Yes.

7 Q. WB date; is that the waybill date?

8 A. Yes, sir.

9 Q. That's March 29, 2006?

10 A. Uh-huh.

11 MR. HASIAK: What did you say?

12 THE WITNESS: Yes.

13 BY MR. MAZAROLI:

14 Q. Okay. And Exhibit 9, that's the same
15 similar information, a waybill number 530159, refer
16 to for container UGMU 806228?

17 A. Yes.

18 Q. And it also has a WB date of 03/29/06?

19 A. That's correct.

20 MR. HASIAK: David?

21 MR. MAZAROLI: Yes, sir.

22 MR. HASIAK: I'm not the court reporter,
23 but you're going through these numbers pretty fast.

24 MR. MAZAROLI: I'm sorry, Ms. Reporter.

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BY MR. MAZAROLI:

Q. This is -- Exhibits 8 and 9 are electronic document, electronic -- printouts of electronic data; is that correct?

A. Yes, sir.

Q. So they stay in the EDI system electronically; is that correct?

A. These documents are not part of our EDI system. These are electronic documents in another Union Pacific system that keeps track of that information.

Q. All right. But they are in the normal course stored electronically and can be viewed on a computer screen?

A. Yes, sir.

Q. Are they usually printed out if all goes as planned and there is no damage or derailment?

A. Generally not, no.

Q. And is that the same with respect to a waybill?

A. That's correct.

Q. Or is the waybill is generated electronically; is that correct?

A. I can't be certain as to what the -- how that -- what that process is. I know we receive the

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you just described, that's not something that's issued to the manufacturer of cargo carried in the container, is it?

A. Union Pacific would not issue that, no.

Q. Okay. But it is a Union Pacific document?

A. The internal waybill that we generate is an internal document, yes.

Q. So in this case the Union Pacific electronic waybill covered the intended rail carriage from California to North Carolina; is that correct?

MR. HASIAK: David, I'm sorry, I'm just not clear on your question. When you say "cover," do you mean it set up the route?

MR. MAZAROLI: Well, I mean it pertained to.

MR. HASIAK: Pertained in?

MR. MAZAROLI: In other words, it was not for a segment of the rail transportation, the electronic waybill is generated by Union Pacific covered the entire rail transportation.

MR. HASIAK: Covered the route of the transportation?

MR. MAZAROLI: In other words, it was a document that pertained to the time Evergreen loads

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waybill electronically from Evergreen and it's kept electronically in our system.

Q. All right. You don't know what such a waybill looks like?

A. An EDI version of the waybill?

Q. Yes, sir.

A. I do know what that looks like, yes.

Q. Okay. What information would be on it?

A. There would be the container number, generally the weight, the seal number, the pricing document that we are to refer to when pricing the container, origin, destination. Those are probably the main components.

Q. All right. And that is a waybill which governs the entire rail transportation during the domestic leg of the multimodal transport; is that correct?

A. Those are the instructions that we receive from the customer telling us what their wishes are with that container to move intermodally, yes.

Q. And the customer in the case of Exhibits 8 and 9 and the two containers we've been discussing would be Evergreen Marine Corporation?

A. Yes, sir.

Q. This waybill that -- electronic waybill

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the containers onto the railcars to the time the containers are delivered -- are unloaded from the railcar at destination.

MR. HASIAK: I'm a little unclear and a little uneasy because I think what the testimony has been so far is that --

MR. MAZAROLI: Let's just say you have an objection to the form, right?

MR. HASIAK: Okay.

MR. MAZAROLI: Okay. Let me see if I can rephrase it.

BY MR. MAZAROLI:

Q. Referring to Exhibits 8 and 9, the online cycle inquiry, sir, what is the R -- well, withdraw that.

Okay. Let's move on.

MR. MAZAROLI: Ms. Reporter, would you mark Exhibits 1 and 2, both -- one, two and -- one and two, both under the Evergreen logo.

(Exhibit Nos. 1 - 2
marked for identification.)

BY MR. MAZAROLI:

Q. Okay. Mr. Hartmann, can you identify the document that's been marked as Exhibit 1?

A. Identified as an Evergreen Marine Sea

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Waybill.

Q. Okay. And it's dated March 14, 2006 on the bottom; is that correct, in the little stamp, circle stamp?

A. Oh, yes, yes, sir.

Q. Okay. And have you seen this before?

A. I've seen this only in that it was given to me as an exhibit for this deposition.

Q. Okay. But in connection with your job experience, your day-to-day activities, you've seen an Evergreen Sea Waybill before, haven't you?

A. We do not get this information, no.

Q. So in the normal course of Union Pacific's business, you do not receive when handling -- when providing rail transportation services for Evergreen Marine Corporation shipments, you do not see the Evergreen bill of lading?

MR. HASIAK: Let me object to the form. When you say "you," do you mean you, Dan Hartmann, or you, Union Pacific?

BY MR. MAZAROLI:

Q. All right. Well, first you, Dan Hartmann.

A. No.

Q. Okay. To your knowledge, does anyone at Union Pacific receive such Evergreen Sea Waybills

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A. No, sir.

Q. The place of receipt in Exhibit 1 is referred to as Shimizu, CY, and the port of loading is referred to as Shimizu, Japan; do you see that?

A. Yes.

Q. And there is a port of discharge shown as Los Angeles, California; do you see that, sir?

A. Yes, I do.

Q. And finally a place of delivery in Statesville, North Carolina?

A. Yes.

Q. Is it your understanding -- there is also an ocean vessel, Ever Union.

Looking at this document, Exhibit 1, is it your understanding that with respect to the description contained herein this was what we call a through bill of lading?

MR. HASIAK: I object to foundation. He's told you he's never seen this document before.

MR. MAZAROLI: And he's also said he's seen other documents in the course of his duties.

BY MR. MAZAROLI:

Q. Do you know what a through bill of lading is, sir?

A. We -- I know what a through bill is.

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during the course of providing transportation services for such shipments?

A. Not to my knowledge.

Q. So the Evergreen Sea Waybill for a particular intermodal shipment is not relevant to Union Pacific?

MR. HASIAK: Dave, come on. I'll object to form and foundation.

BY MR. MAZAROLI:

Q. Okay. Have you seen -- you are familiar with what a bill of lading is for multimodal transportation, aren't you?

A. Yes.

Q. Okay. And you've seen other bills of lading not necessarily Evergreen; is that correct?

A. Yes.

Q. Okay. Now, Exhibit 1, for example, do you see the top left as identification of a shipper, a consignee and a notifying party?

A. Yes.

Q. The shipper, ASMO Limited, do you know who that is?

A. No, I do not.

Q. The consignee is ASMO North Carolina; do you know who that is?

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Q. What is that?

A. It's a bill that we receive from a shipper that asks us to take a container at origin and deliver it to a carrier. In most cases it's an eastern rail carrier for continuance to the final destination.

Q. But you're not familiar with whatever a multimodal through bill of lading would be?

A. I'm not familiar with that, no.

Q. With respect to the shipments we have been discussing, the shipment of auto parts carried in containers which are also identified on Exhibit 1, is it your understanding that those shipments moved in multiple modes of transportation, in other words, ocean and rail carriage?

A. Yes.

Q. Okay. And how do you know that?

A. Because it was loaded at the marine terminal in Los Angeles off of a vessel.

Q. And how do you know that?

A. We received billing to move it from their marine terminal.

Q. Okay. So you're familiar based on your normal course of activities with Evergreen that when it has multimodal shipments that you're

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1 transporting, they usually involve an ocean leg
2 either before Union Pacific carries the shipment or
3 after Union Pacific carries the shipment; is that
4 correct?

5 A. Usually, yes.

6 Q. Okay. And the shipments of auto parts
7 carried in containers TRIU 5559381 and UGMU 8062288
8 moved aboard an ocean vessel before they reached the
9 marine terminal at Los Angeles; is that correct?

10 A. That's what I would -- I would agree, yes.

11 Q. Okay. And at Los Angeles, California the
12 shipment was -- the shipments referred to in
13 Exhibit 1, the two containers we've been discussing,
14 was then transferred from an Evergreen ship to Union
15 Pacific for rail carriage to Statesville, North
16 Carolina; is that correct?

17 A. It was -- we received instruction to move
18 it from Los Angeles to Memphis, Tennessee.

19 Q. Okay.

20 A. And then interchange it to the Norfolk
21 Southern, and then they would carry it to, I
22 believe, Charlotte, North Carolina.

23 Q. And where does the derailment occur?

24 A. In Arkansas, Higgins --

25 Q. All right.

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1 A. That transferred the load to Memphis?

2 Q. Yeah. I mean, it was a Union Pacific
3 locomotive?

4 A. To Memphis, yes.

5 Q. For the benefit of the Court, the
6 derailment occurred before the shipment reached
7 Memphis; is that correct?

8 A. That's correct.

9 Q. Okay. So the derailment in question
10 happened while it was being carried by Union
11 Pacific?

12 A. That's correct.

13 Q. Sir, Exhibit 2 is before you. It is also
14 a Sea Waybill, an Evergreen Sea Waybill for the two
15 subject shipments which has certain additional
16 information, and, as you can see, is not signed on
17 the right. Do you see the -- have you seen this
18 document before?

19 A. No.

20 Q. Okay. Exhibit 2, the bottom third there
21 is freight and charges information; do you see that?

22 A. I do.

23 Q. Was Union Pacific involved in formulating
24 those freight charges?

25 A. I'm not sure I understand.

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1 A. Higginson.

2 Q. And that was for the final delivery in
3 North Carolina?

4 A. Final delivery, yes, in North Carolina.

5 Q. Okay. Did Union Pacific bill Evergreen
6 for the entire rail transport from Los Angeles to
7 North Carolina for the two subject shipments?

8 A. No.

9 Q. Why not?

10 A. Because international -- our rules
11 internally are that we bill customers for the
12 portion of the movement that we are responsible for,
13 which would be from Los Angeles to Memphis.

14 Q. Okay. And who bills the rest?

15 A. The Norfolk Southern would have billed the
16 second piece.

17 Q. Is that done in any particular document?

18 A. Can you restate that question, I'm not
19 sure I understand that?

20 Q. Does Norfolk Southern send a bill to
21 Evergreen directly?

22 A. I can't -- I can't answer that.

23 Q. Okay. But the train that transported the
24 load was still a Union Pacific train; is that
25 correct?

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1 Q. Well -- go ahead, sir.

2 A. I can say that we are responsible for
3 providing Evergreen what the intermodal rate is for
4 the piece that we handle.

5 Q. Okay.

6 A. How that is incorporated into the Sea
7 Waybill I can't -- I don't know.

8 Q. Okay. So, in other words, Union Pacific
9 does not -- withdraw that.

10 Is it your understanding that Union
11 Pacific bills Evergreen for the rail transport that
12 Union Pacific provides, and Evergreen then bills its
13 own customer, such as ASMO in this case?

14 A. That would be my understanding.

15 Q. Okay. So Union Pacific does not
16 communicate its freight charges for the rail
17 transport directly to Evergreen's customers, such as
18 ASMO; is that correct?

19 A. That is correct.

20 MR. MAZAROLI: Would you mark Exhibit 2B,
21 Ms. Reporter, which is Bates No. A00158 to A00171.

22 (Exhibit No. 2B
23 marked for identification.)

24 BY MR. MAZAROLI:

25 Q. Sir, can you identify Exhibit 2B?

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- 1 A. It's the back of the Sea Waybill.
 2 Q. And how do you know that?
 3 A. I know that because of the -- some of the
 4 meetings we've had internally regarding the
 5 components of the exhibits.
 6 Q. Okay. In other words, in preparation for
 7 today's deposition?
 8 A. Correct.
 9 Q. But other than in connection with this
 10 court case, can you identify this document?
 11 A. No.
 12 Q. Okay. This is not a document -- the
 13 Evergreen terms and conditions are not within your
 14 knowledge on a day-to-day basis; is that correct?
 15 A. As a marketing representative of Union
 16 Pacific, no, they are not in -- I don't come into
 17 knowledge of this in my position.
 18 Q. Okay. Do you know, does Union Pacific --
 19 you mentioned that you have files for customers such
 20 as Evergreen, and one of those files includes
 21 contract negotiations. What contract negotiations
 22 were you referring to in that testimony?
 23 A. I've negotiated contracts for Costco as
 24 well as Evergreen.
 25 Q. What contract do you mean by that, is

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- 1 there a title to it?
 2 A. Yes.
 3 Q. And what's it called?
 4 A. Well, I negotiated the -- one of the
 5 exhibits in this testimony.
 6 Q. Which one is that?
 7 A. I negotiated the extension agreement.
 8 Q. Okay.
 9 A. Which is dated October 8 of 2003.
 10 Q. All right.
 11 A. I have some others, but I don't have
 12 those -- that information with me.
 13 Q. And what are those others?
 14 A. Like we negotiated a new contract with
 15 Evergreen in 2006 and a contract with Costco in
 16 2006.
 17 Q. When in 2006 with Evergreen?
 18 A. The effective date is May 1st of 2006.
 19 Q. Okay. The extension agreement you just
 20 referred to, are you referring to the addendum to a
 21 previously existing agreement?
 22 A. Yes, sir.
 23 Q. And what is the previously existing
 24 agreement?
 25 A. The previous existing agreement is -- we

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- 1 call it DER-UP-C-913-A.
 2 Q. And what is that type of contract called?
 3 A. It's an exempt rail transportation
 4 agreement.
 5 MR. MAZAROLI: All right. Let's mark
 6 Exhibits 3 and 4, Ms. Reporter.
 7 (Exhibit Nos. 3 - 4
 8 marked for identification.)
 9 BY MR. MAZAROLI:
 10 Q. Can you identify Exhibit 3?
 11 A. Yes, I can. Exempt rail transportation
 12 agreement between Evergreen America Corporation,
 13 Evergreen Marine Corporation, Lloyd Triestion, Hatsu
 14 Marine and Union Pacific Railroad Company.
 15 Q. And it's Bates numbered A003 through
 16 A00016; is that correct?
 17 A. That's correct.
 18 Q. And what is Exhibit 4?
 19 A. Exhibit 4 is the first addendum to exempt
 20 rail transportation agreement between Union Pacific
 21 and Evergreen. The purpose of that agreement is to
 22 amend the term.
 23 Q. Okay. And were you involved in the
 24 negotiation of Exhibit 3?
 25 A. No, sir.

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- 1 Q. Is that because it was in effect before
 2 you took your present position?
 3 A. That's correct.
 4 Q. Exhibit 3 is basically an agreement
 5 between Union Pacific on one hand and the Evergreen
 6 companies on the other; is that correct?
 7 A. That's correct.
 8 Q. In Paragraph 1, the warranty includes a
 9 reference that the customer, Evergreen, controls the
 10 routing of the shipments covered under the
 11 agreement; do you see that?
 12 A. Yes.
 13 Q. What does that mean?
 14 A. I don't know --
 15 Q. Okay.
 16 A. -- legally what that means.
 17 Q. All right. And Exhibit 3, the scope of
 18 the services, it states in the first sentence,
 19 Railroad services provided hereunder shall be
 20 container double stack car and container
 21 conventional flatcar transportation and related
 22 operations.
 23 What are those two categories?
 24 A. Well, that just covers the car types that
 25 we would utilize to provide rail transportation

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1 services.

2 Q. Okay. In Paragraph 4, the third -- the
3 third line -- the third subsection of that
4 paragraph, international cargo.

5 A. Yes.

6 Q. It states, International cargo shall refer
7 to cargo which has a point outside the continental
8 U.S. -- United States as its ultimate point of
9 origin or destination.

10 A. Yes.

11 Q. Okay. And that description would cover
12 the shipments of auto parts carried in the two
13 containers we have been discussing; is that correct?

14 A. That's correct.

15 Q. There is reference in Exhibit 3 to an
16 Exhibit A, transportation rate.

17 A. Yes.

18 Q. Do you have that document with you?

19 A. I do.

20 Q. And you have it in the room?

21 A. I do, yes.

22 Q. How many pages is it?

23 A. One page.

24 MR. MAZAROLI: I called for production of
25 that. I faxed, my office.

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1 rates for.

2 Q. In other words, it covers the corridors
3 that Evergreen is interested in?

4 A. That's correct.

5 Q. And is there a -- I'm not interested in
6 the amounts so much as what it contains. Is there
7 for each corridor a rate?

8 A. Yes, there is.

9 Q. And is there for each corridor a rate for
10 a different type of shipment, or is there only one
11 rate?

12 A. It is -- there are three types of rates.
13 They are all considered international rates. They
14 all pertain to what we call freight all kinds,
15 F-A-K. We have eastbound loaded, westbound loaded,
16 and westbound empty.

17 Q. Okay. Those are the three categories?

18 A. Yes, sir.

19 Q. And freight all kinds, I mean, that would
20 include auto parts?

21 A. It would.

22 Q. Okay. As well as many other things; is
23 that correct?

24 A. Right.

25 Q. Any other categories contained on that

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1 MR. GUTTERMAN: I registered an objection
2 as the rates are being -- considered to be
3 confidential. It would also require approval of
4 release of this information from Evergreen; is that
5 correct?

6 THE WITNESS: Yes, it is.

7 MR. MAZAROLI: Okay. Why is that
8 information confidential?

9 MR. HASIAK: Are you asking Barry?

10 MR. MAZAROLI: No, I'm asking the witness.

11 THE WITNESS: It's confidential to --
12 because we want to protect the market. We don't
13 want the information being disclosed to the
14 marketplace.

15 BY MR. MAZAROLI:

16 Q. Okay. In other words, you don't want your
17 competitors to find out, for example?

18 A. That would be our primary concern, yes.

19 Q. Are these rates -- I mean, you said it's
20 one page; is that correct?

21 A. Yes, sir.

22 Q. Does that cover the entire Union Pacific
23 system insofar as Evergreen movements?

24 A. It covers the origin, destination pairs
25 that Evergreen has asked for us to provide them

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1 Exhibit A?

2 A. No, sir.

3 Q. And when I say Exhibit A, I mean Exhibit A
4 referred to in Deposition Exhibit 3.

5 So basically there are three categories of
6 rates, one eastbound loaded, one westbound loaded
7 and the other empties did you say?

8 A. Right.

9 Q. Okay. And there is no choice of rates
10 offered to Evergreen within those three categories,
11 is there?

12 MR. HASIAK: Do you understand the
13 question?

14 THE WITNESS: Could you clarify that? I
15 think I know what you're asking, but could you
16 clarify that, please?

17 BY MR. MAZAROLI:

18 Q. I'm asking you just to describe what's on
19 that document, the Exhibit B to Exhibit 3 -- Exhibit
20 A to Exhibit 3.

21 A. For --

22 Q. The three categories you just described,
23 eastbound loaded shipments, westbound loaded
24 shipments and empty shipments, for the various
25 corridors described therein, there is no other rate

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described in that document, is there, for each of those categories?

A. No.

MR. MAZAROLI: Okay. Is there any reason we can't have that produced, Mr. Hasiak and Mr. Gutterman, without the prices? I'm not interested in the amounts.

MR. HASIAK: Yeah, I think we can confer internally, but if we just redacted the pricing amounts, I'm not sure there would be any problem with that.

MR. MAZAROLI: Okay. In other words, there is one price for each of those categories for each corridor; is that correct?

MR. HASIAK: It's a grid.

THE WITNESS: Yeah, if I could clarify. You know, for example, if you look at eastbound loaded, sir, there is a 20-foot rate.

BY MR. MAZAROLI:

Q. Right.

A. And there is a 40-foot, 45-foot rate.

Q. Okay.

A. Okay. So, for example, from Los Angeles to Chicago --

Q. Right.

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Let me approach this from another way, Mr. Hartmann.

MR. HASIAK: While we're on this, why don't we take a ten minute break.

MR. MAZAROLI: Thank you.

(10:42 a.m. - Recess taken.)

BY MR. MAZAROLI:

Q. Does that Exhibit A referred to in Paragraph 4 of Deposition Exhibit 3 only refer to International intermodal shipments?

A. Yes.

Q. Okay. In other words, the transportation rates pertaining to the exempt rail transportation agreement do not apply to domestic shipments?

A. Correct.

Q. Okay. The rates are only for international shipments such as the shipments of auto parts that we -- which are the subject of this court case; is that correct?

A. Yes.

Q. All right. One moment. And is there a provision of the contract, the agreement that's marked as Deposition Exhibit 3 which refers to confidentiality of the transportation rates?

A. I don't know.

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A. -- you would have an eastbound -- you would have two loaded eastbound rates, one for 20 foot, one for 40/45, but that would be their only choice for a eastbound loaded rate from Los Angeles to Chicago.

Q. Okay. In other words, for a 40-foot container there would only be one rate stated in that schedule? A 40-foot container moving from Los Angeles to Memphis in April and May and -- March and April of 2006?

A. Correct.

Q. There would only be one rate designated on Exhibit B -- Exhibit A of Exhibit 3 for such an eastbound loaded 40-foot container?

A. That is correct.

MR. MAZAROLI: Okay. Yeah, I do call for production of that exhibit with the understanding that you will redact, for example, block out the amounts of the freight charges. I understand your concerns.

MR. HASIAK: As I indicated, we'll confer internally and I'll confirm that's okay. Right now I don't think there will be any problem, but for now the objection stands.

MR. MAZAROLI: Thank you.

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Q. Is it your understanding that Evergreen would not in the normal course send the list of transportation rates referred to in Paragraph 4 to its customers?

A. That's correct.

Q. Okay. I mean, is it your understanding that Evergreen bills its own customers for the transportation stage of multimodal transports, such as the shipments in question, at a higher rate than Union Pacific charges Evergreen?

A. I don't know.

Q. Do you understand Evergreen to be a for profit company?

A. Yes.

Q. So it would not be unusual for Evergreen to make a profit on the transportation services it bills its customers?

MR. GUTTERMAN: Objection as to form and relevancy.

BY MR. MAZAROLI:

Q. Is that correct, sir?

A. It's not unreasonable.

Q. No. I mean, let's -- I'm not trying to be argumentative, but Union Pacific is in the business of providing transportation services for a profit;

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1 isn't that correct?

2 A. That's correct.

3 Q. Okay. And Evergreen provides
4 transportation services to its customers, including
5 the services which Union Pacific performs during the
6 rail stage of international intermodal shipments; is
7 that correct?

8 A. Yes.

9 MR. HASIAK: Mr. Mazaroli asked to know if
10 anybody entered the room.

11 MR. MAZAROLI: Hi, Mr. Hasiak.

12 MR. HASIAK: Hi. I asked one of our law
13 clerks if she was interested in listening into this
14 deposition, so she's in -- she's currently in the
15 room with us.

16 MR. MAZAROLI: All right. Let's just put
17 her name on the record.

18 THE COURT REPORTER: Ma'am, what is your
19 name, please.

20 MS. CIRONE: Liz Cirone, C-I-R-O-N-E.

21 BY MR. MAZAROLI:

22 Q. All right. Sir, when you negotiated --
23 you testified that Exhibit 4 is an extension of the
24 agreement that we marked as Exhibit 3; is that
25 correct?

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1 A. The rate levels were different, but the
2 structure of Exhibit A other than the rate levels
3 stayed the same.

4 Q. Okay. So the structure in that you have
5 the categories for loaded eastbound and loaded
6 westbound and empty which varied only for the size
7 of container that you described in detail previously
8 was the same structure at the time of the derailment
9 in question; is that correct?

10 A. That's correct.

11 Q. What do you have in front of you, the
12 exhibit with transportation rates that was in effect
13 after the addendum took effect or for the earlier
14 agreement?

15 A. I have two versions. I have the version
16 that was in the original agreement effective
17 January 15th, 2002, and I have a version just with
18 the rate levels that were in effect in April of
19 2006.

20 Q. You say the only difference between those
21 two is the dollar amounts?

22 MR. HASIAK: I object to the form when you
23 say these two.

24 MR. MAZAROLI: Well, those two schedules,
25 two --

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1 A. That's correct.

2 Q. You negotiated Exhibit 4?

3 A. Yes, sir.

4 Q. And Exhibit 4 essentially, other than as
5 contained in the two pages marked as Exhibit 4,
6 carries forward the terms of the agreement as stated
7 in Exhibit 3; is that correct?

8 A. That's correct.

9 Q. Is there a -- the transportation rates
10 referred to in Paragraph 4 of Exhibit 3, did that
11 change when the first addendum to exempt rail
12 transportation agreement marked as Exhibit 4 took
13 effect?

14 MR. GUTTERMAN: Objection. There is
15 absolutely no relevancy of the question, but he can
16 go ahead and answer the question.

17 THE WITNESS: Exhibit 4 simply extended,
18 like you said, the agreement, Exhibit B -- Exhibit 3
19 as it's stated. The rate document, Exhibit A,
20 stayed intact.

21 BY MR. MAZAROLI:

22 Q. Okay. So the rate document, Exhibit A,
23 that you and your counsel have indicated is
24 confidential, that was the same at the time of the
25 derailment in April of 2006; is that correct?

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1 MR. HASIAK: They are two multi-page
2 documents, so I'm not sure your question is clear.
3 MR. MAZAROLI: I thought the first one he
4 referred to is one page; is that correct,
5 Mr. Hartmann?

6 THE WITNESS: That's correct.

7 MR. HASIAK: The exhibit?

8 THE WITNESS: Exhibit A. Is it just
9 Exhibit A you're referring to, sir?

10 MR. MAZAROLI: Yes, sir, the
11 transportation rates.

12 MR. HASIAK: In Exhibit 3?

13 MR. MAZAROLI: Yes, referred to in
14 Paragraph 4 of Exhibit 3.

15 MR. HASIAK: Which has how many pages?

16 THE WITNESS: One page.

17 MR. HASIAK: Exhibit 3?

18 MR. MAZAROLI: No, Exhibit 3 has multiple
19 pages.

20 MR. HASIAK: My point finally.

21 MR. MAZAROLI: I'm referring to -- it's
22 difficult since we don't --

23 MR. GUTTERMAN: Exhibit A to 3, to
24 Exhibit 3.

25 MR. HASIAK: I was just looking for a

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1 little clarity.

2 BY MR. MAZAROLI:

3 Q. How many pages are the transportation rate
4 documents, Mr. Hartmann?5 A. There is one page to Exhibit A which
6 includes the rates.7 MR. HASIAK: Why don't we just talk about
8 the Bates number on the bottom right-hand corner and
9 eliminate the confusion?10 MR. MAZAROLI: The confusion is that you
11 have a document that we don't have, Mr. Hasiak. I'm
12 not referring to documents that we --13 MR. HASIAK: Oh, this is the one we
14 objected to the rates.15 MR. MAZAROLI: Yes. I want to know how
16 many pages each of the rate sheets that have not
17 been produced.18 MR. HASIAK: And the answer is the rate
19 sheets are --

20 THE WITNESS: There is one rate sheet.

21 MR. HASIAK: On each agreement.

22 MR. MAZAROLI: On each agreement, and each
23 one is one page?

24 THE WITNESS: Correct.

25 MR. MAZAROLI: Thank you. All right. We

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1 Q. Paragraph B, loading, unloading?

2 A. Yes.

3 Q. The third sentence of Paragraph B of
4 Paragraph 16 states, Railroad will not transport
5 containers when the weight of the containers exceeds
6 the railcar limitations.

7 What does that mean?

8 MR. HASIAK: If you know.

9 THE WITNESS: I don't know for certain,
10 no.

11 BY MR. MAZAROLI:

12 Q. Okay. How is the weight of containers
13 determined for Union Pacific Railroad's purposes in
14 the context of this paragraph?15 A. The customer submits the weight of the
16 container in their waybill information.

17 Q. Okay.

18 A. And then we incorporate that into our load
19 plan. And if -- if it meets the requirements or
20 comes in under the weight limit, then we move the --
21 we move the car.

22 Q. Okay. What is a load plan?

23 A. A load plan is an instruction that the
24 operating department uses to load out a train.

25 Q. And what is the substance of the

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1 would like production of both of those, and when you
2 produce them with the redaction, please indicate
3 which one pertains to Exhibit 3, exempt rail
4 transportation agreement, and which one pertains to
5 Deposition Exhibit 4, the first addendum to exempt
6 rail transportation agreement.7 MR. HASIAK: David, just to be clear,
8 we're maintaining our objection. I told you we
9 would discuss this internally.

10 MR. MAZAROLI: I understand.

11 MR. HASIAK: Well, the way you state that
12 the record would tend to at least indicate that
13 maybe we agreed to something we haven't agreed to
14 yet.15 MR. MAZAROLI: No, you're maintaining your
16 objection, I'm maintaining my request.

17 MR. HASIAK: Okay.

18 MR. GUTTERMAN: So it's under advisement
19 as to what we will do with this; is that correct,
20 Ray?

21 MR. HASIAK: That's correct.

22 BY MR. MAZAROLI:

23 Q. Referring to Exhibit 3, Bates No. Page
24 A00011.

25 A. Yes.

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1 instructions, does it state which container goes
2 where?

3 A. You're getting --

4 MR. HASIAK: David, No. 1, I think you're
5 in an area where, you know, he's not from that
6 department, and No. 2, what in the world does this
7 have to do with this particular lawsuit as opposed
8 to a different lawsuit that you're working on?9 MR. MAZAROLI: Everything. It's in this
10 contract. I don't know that this is in the other --
11 any other case.12 MR. GUTTERMAN: It's the liability in
13 this --14 MR. MAZAROLI: Objection as to the form.
15 I would rather not have speaking objections. Let me
16 ask it another way, sir.

17 BY MR. MAZAROLI:

18 Q. Mr. Hartmann, is there a physical weighing
19 of containers by Union Pacific Railroad before the
20 containers are loaded onto a train?

21 A. No.

22 Q. Is there the capability of Union Pacific
23 Railroad to weigh the content of railcars during the
24 course of rail transportation?

25 A. I don't know.

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- 1 Q. Okay. Referring to Page A 00016 of
2 Deposition Exhibit 3, it references a signing bonus
3 of \$500,000 to be paid to Evergreen America
4 Corporation.
5 A. Yes.
6 Q. Was that signing bonus paid?
7 MR. GUTTERMAN: Objection as to relevance.
8 THE WITNESS: I don't know. Like I said,
9 this contract was incorporated prior to my being on
10 the position.
11 BY MR. MAZAROLI:
12 Q. Was there a signing bonus for the addendum
13 to the exempt rail transportation agreement?
14 A. No, there was not.
15 Q. Sir, referring to Paragraph 3 of
16 Exhibit 3, towards the bottom of that paragraph
17 there is reference to Union Pacific Railroad Company
18 Exempt Circular 20 series.
19 A. Yes.
20 Q. Was Exempt Circular 20 series in effect at
21 the time of the derailment at Higginson, Arkansas?
22 A. I don't know that it was Exempt Circular
23 20 series or one of the successor issues --
24 Q. Okay.
25 A. -- i.e., MITA.

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- 1 A. It's the Master Intermodal Transportation
2 Agreement.
3 Q. Is it referred to by any other title?
4 A. Yes, it is. It's referred to by MITA or
5 MITA 2-A.
6 Q. So what is this Exhibit 5, is it MITA or
7 MITA 2-A as you would describe it in your day-to-day
8 duties?
9 A. I would describe it as MITA.
10 Q. Having reviewed -- seen this document,
11 does it refresh your recollection at all as to
12 whether Circular 20 was in effect at the time of the
13 derailment at Higginson, Arkansas or one of the MITA
14 type rules documents?
15 A. Yeah, the bottom left of the MITA document
16 shows issued February 22nd, 2006.
17 Q. And it also shows an effective date of
18 March 1, 2006?
19 A. Right.
20 Q. So is it your understanding that the
21 document marked as Exhibit 5 was in effect at the
22 time of the derailment at Higginson, Arkansas on
23 April 5th, 2006?
24 A. That's my understanding, yes.
25 Q. Were you involved in the drafting of this

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- 1 Q. Do you know which was in effect on
2 April 5th, 2006?
3 A. I don't know.
4 Q. Does Exhibit 3 -- you've seen Exhibit 3
5 before, haven't you, sir?
6 A. Yes.
7 Q. And in connection with your negotiation of
8 the first addendum marked as Exhibit 4, you studied
9 Exhibit 3, didn't you?
10 A. Yes.
11 Q. Does Exhibit 3 refer to a document
12 entitled master intermodal transportation agreement?
13 A. No.
14 Q. Does Exhibit 4, the first addendum, refer
15 to a document entitled master intermodal
16 transportation agreement?
17 A. No.
18 MR. MAZAROLI: Ms. Reporter, would you
19 mark Exhibit 5? It has Bates No. 7001 through 7109.
20 (Exhibit No. 5
21 marked for identification.)
22 BY MR. MAZAROLI:
23 Q. Mr. Hartmann, can you identify Exhibit 5?
24 A. Yes, I can.
25 Q. What is it?

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- 1 document?
2 A. No, sir.
3 Q. What relevance, if any, does this document
4 have to your day-to-day duties?
5 A. Very high level of relevance.
6 Q. Excuse me, sir?
7 A. A very high level of relevance.
8 Q. Okay. Is it relevant at all to Union
9 Pacific's relationship with Evergreen Marine
10 Corporation?
11 A. I don't understand that question.
12 Q. Referring to Page 7010 of Exhibit 5 --
13 A. Yes.
14 Q. Paragraph O states, Shipper agrees to
15 notify any and all parties involved in this
16 transaction of all the provisions, restrictions, and
17 limitations contained in this MITA.
18 A. Yes.
19 Q. Who does the word shipper refer to?
20 A. Shipper is the party tendering a rail
21 waybill to Union Pacific.
22 Q. And that would be -- in the context of
23 this court case, would that be Evergreen?
24 A. That's correct.
25 Q. So according to Exhibit 5, the MITA 2-A

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1 document, Evergreen agrees to notify any and all
2 other parties involved in this transaction of the
3 provisions of MITA; is that correct?

4 MR. HASIAK: I object to the form of the
5 question. You asked him what the agreement says,
6 not what Evergreen agrees to do.

7 BY MR. MAZAROLI:

8 Q. Okay. Well, that's what that sentence
9 means, doesn't it?

10 MR. HASIAK: He doesn't control what
11 Evergreen does or doesn't do.

12 MR. MAZAROLI: I didn't ask that question
13 yet, Mr. Haslak.

14 BY MR. MAZAROLI:

15 Q. According to sentence one of Paragraph O
16 on Page 7010, the word shipper refers to Evergreen;
17 is that correct?

18 A. That's correct.

19 Q. So that sentence means that Evergreen
20 agreed to notify any and all parties of the terms of
21 MITA; is that correct?

22 MR. GUTTERMAN: Objection, the sentence
23 speaks for itself. He's already answered who the
24 shipper was.

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1 Q. Is a Union Pacific Railroad representative
2 or agent present at the overseas place where a
3 multimodal carrier such as Evergreen would take
4 custody of an intermodal shipment, to your
5 knowledge?

6 A. Not to my knowledge.

7 MR. HASIAK: Hey, David, we only reserved
8 this room for two hours. We didn't think it would
9 go on as long as it has. How much more time do you
10 think you're anticipating?

11 MR. MAZAROLI: It's hard to say. Not more
12 than an hour I would say. Is that a problem?

13 MR. HASIAK: Well, we might get kicked out
14 of the room. I guess we'll cross that when we get
15 to it.

16 MR. MAZAROLI: All right. Let's keep
17 working.

18 BY MR. MAZAROLI:

19 Q. After seeing Exhibit 5, sir, can you tell
20 me if UP Exempt Circular 20 series, Item No. 142 B
21 in effect at the time of the shipments in question?

22 MR. GUTTERMAN: Objection as to the
23 question. He's already testified that --

24 MR. MAZAROLI: No speaking objections,
25 please. Just objection to the form, Mr. --

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D. HARTMAN - DIRECT (BY MR. MAZAROLI)

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1 BY MR. MAZAROLI:

2 Q. Okay. Do you know if before the movement
3 of the shipments of auto parts which are the subject
4 of this court case from the overseas origin ports,
5 whether Evergreen notified the actual cargo owners
6 of the terms of MITA?

7 A. No, sir, I don't know.

8 Q. Okay. Referring to Page 7024 --

9 A. Yes.

10 Q. -- Paragraph D-1.

11 A. Yes.

12 Q. It states, UPRR has the right to open
13 units at any time to inspect, weigh or reject
14 shipments at origin en route or at destination.

15 A. Yes.

16 Q. Was that provision in effect in April of
17 2006?

18 A. Yes, it was.

19 Q. And did that provision apply to Evergreen
20 intermodal shipments?

21 A. Yes.

22 Q. The two shipments of auto parts that are
23 the subject of this court case originated outside
24 the borders of the United States; is that correct?

25 A. That's correct.

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1 MR. GUTTERMAN: Objection to the form.
2 He's already --

3 MR. MAZAROLI: I don't want speaking
4 objections, Mr. Gutterman, you're too good a lawyer
5 for that.

6 BY MR. MAZAROLI:

7 Q. Having seen Exhibit 5, can you determine
8 or testify as to whether or not UP Exempt Circular
9 20 series, Item No. 142 B was still in effect in
10 March and April of 2006?

11 A. I don't know.

12 Q. When Union Pacific Railroad received the
13 two shipments of auto parts which are the subject of
14 this court case, did Union Pacific issue any other
15 terms and conditions -- withdraw that.

16 Other than documents that are marked in
17 today's deposition, are you aware of any other terms
18 and conditions which might apply to the two
19 shipments of auto parts which are the subject of
20 this court case?

21 A. No.

22 Q. When Union Pacific Railroad billed
23 Evergreen for the intermodal shipments carried on
24 the subject train ITIMNX 01, how was that billing
25 done, is it done electronically?

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1 A. I don't know if it's electronic or if it's
2 paper at that time.

3 Q. Just one second. Sir, referring to 3, the
4 exempt rail transportation agreement at Page
5 A 00014.

6 A. Yes.

7 Q. Numbered Paragraph 22, electronic data
8 interchange, subparagraph E; do you see that?

9 A. Yes, I do.

10 Q. The first sentence states, Customer shall
11 endeavor to increase the utilization of EDI for the
12 timely transmission of bills of lading for the
13 movement of its equipment on the Railroad.

14 A. Yes.

15 Q. Who is the customer in that sentence, is
16 it Evergreen?

17 A. It's Evergreen, that's correct.

18 Q. And what bills of lading does this
19 sentence refer to; is it the electronic waybills we
20 discussed previously?

21 A. It's the electronic rail waybills.

22 Q. Electronic rail waybills.

23 The next page, sir, A 00015. The notify
24 party for the railroad is the business manager; is
25 that you?

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D. HARTMANN - CROSS (BY MR. GUTTERMAN)

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1 successor issues thereto.

2 What does that mean, successor issues
3 thereto, would that include MITA?

4 A. Yes, it would.

5 Q. Now, with regard to Exhibit 6 and 7 --

6 A. Yes.

7 Q. Look at those.

8 A. Yes.

9 Q. Tell me who generated these two documents.

10 A. Union Pacific.

11 Q. And what are these two documents?

12 A. It's rail waybill information.

13 Q. Okay. Now, on the two documents is there
14 any reference to a contract?

15 MR. MAZAROLI: Objection, the witness
16 testified he was not familiar with these two
17 documents.

18 BY MR. GUTTERMAN:

19 Q. Well, now the documents are in front of
20 you. You saw these documents prior to the
21 deposition today; is that correct?

22 A. They were in the exhibits, yes.

23 Q. Okay. Is there a reference in there to
24 any contract?

25 MR. MAZAROLI: Objection to the form.

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1 A. That would be -- well, again, at the time
2 I wasn't --

3 Q. Right.

4 A. -- involved in this, but the railroad
5 business manager would be the account manager
6 responsible for Evergreen at that time.

7 Q. Okay. And would that be you in April of
8 2006?

9 A. In April 2006 that would be me, yes.

10 Q. Do you know if Evergreen conducted an
11 investigation as to the cause of the derailment?

12 A. I don't know.

13 Q. Do you know if Evergreen sent anyone to
14 the derailment site?

15 A. I don't know that either.

16 MR. MAZAROLI: Let's go off the record.

17 (11:27 a.m. - Recess taken.)

18 CROSS-EXAMINATION

19 BY MR. GUTTERMAN:

20 Q. I just had a few questions then.

21 Would you take a look at Exhibit 3,
22 Paragraph 3?

23 A. Yes.

24 Q. The sentence about fifth from the bottom,
25 it says, Union Pacific Exempt Circular 20 series and

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D. HARTMANN - CROSS (BY MR. GUTTERMAN)

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1 BY MR. GUTTERMAN:

2 Q. Go ahead and answer.

3 A. Yes, there is.

4 Q. And what is that contract?

5 A. DER 913.

6 Q. And is that the reference to the ERTA
7 agreement with Evergreen?

8 A. Yes, it is.

9 Q. Now, with regard to Exhibit 5 that
10 Mr. Mazaroli had asked you some questions about, you
11 also made mention of some item, I believe it was 142
12 and 143. Is there any reference in the MITA 2-A,
13 which is Exhibit 5, to either of those two items?

14 A. Can you repeat that question, I'm sorry?

15 Q. Referenced in Exhibit 5, which is the MITA
16 2-A.

17 A. Yes.

18 Q. To any item such as 142 or 143 that
19 Mr. Mazaroli had raised a question with you before,
20 I believe it evolved out of Exempt Circular 20 B, is
21 there any reference in the MITA 2-A to those
22 provisions?

23 A. No.

24 Q. Now, do you have any knowledge as to the
25 extent of the alleged damages to the cargo in issue?

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D. HARTMANN - REDIRECT (BY MR. MAZAROLI)

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- 1 A. Only as to what's on Exhibit 11.
 2 Q. And how about with regard to any
 3 containers?
 4 A. I don't -- I don't have any knowledge as
 5 to what the damage to the containers itself is, just
 6 to the contents.
 7 Q. Now, with regard to -- I think it was
 8 Exhibit 11, that was prepared by Union Pacific; is
 9 that correct?
 10 A. Yes, sir.
 11 Q. Would that have been prepared by someone
 12 in your Palestine office for the claims department?
 13 A. Yes.
 14 Q. Now, with regard Evergreen, do they
 15 disclose to Union Pacific who their customer is?
 16 A. No, they do not.
 17 MR. GUTTERMAN: I have no other questions.

REDIRECT EXAMINATION

- 18 BY MR. MAZAROLI:
 19 Q. All right. Mr. Hartmann?
 20 A. Yes.
 21 Q. Exhibit 6 and 7.
 22 A. Yes.
 23 Q. You testified when I asked on direct what
 24 these were that you did not know what they were; is
 25

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D. HARTMANN - REDIRECT (BY MR. MAZAROLI)

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- 1 more raw format.
 2 Q. It's still electronic when you look at it?
 3 A. Yes, sir.
 4 Q. And this information is intended to stay
 5 electronic; is that correct?
 6 A. Yes, it would be.
 7 Q. And what type of system is the waybill
 8 information generated on, is it the EDI system or
 9 another one you mentioned?
 10 A. I don't know what system it's generated
 11 on. I just know what system I use to access the
 12 information.
 13 Q. I mean, is it a Union Pacific proprietary
 14 system?
 15 MR. HASIAK: Do you know?
 16 THE WITNESS: I think so. I don't know
 17 for sure.
 18 BY MR. MAZAROLI:
 19 Q. Can I get access to it?
 20 A. No.
 21 Q. Why not?
 22 A. Because you have to have a Union Pacific
 23 user ID and password.
 24 Q. To get the waybill information; is that
 25 correct?

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D. HARTMANN - REDIRECT (BY MR. MAZAROLI)

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- 1 that true?
 2 A. I do not know what they are in the format
 3 that exists in Exhibit 6 and 7.
 4 Q. So when you were answering Mr. Gutterman's
 5 questions concerning reference to a contract, you
 6 were basically reading what was before you; is that
 7 correct?
 8 A. Well, I was reading what was before me,
 9 that's correct.
 10 Q. And you had no independent knowledge of
 11 what went into the makeup of this -- these documents
 12 marked Exhibit 6 and 7; is that correct?
 13 A. No, I'm familiar with the EDI information
 14 we receive from the customer, which is the same
 15 information in a different format.
 16 Q. Is the document, to your knowledge -- to
 17 your knowledge, the document marked -- well, let me
 18 back up.
 19 Why aren't you familiar with Exhibit 6 and
 20 7?
 21 A. Because when I look at waybill information
 22 on the system that I utilize day-to-day, it's not in
 23 this format.
 24 Q. Where is it when you look at it?
 25 A. It's in our TCS system which shows it in a

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- 1 MR. HASIAK: Do you know?
 2 THE WITNESS: No, I don't know. Yeah.
 3 BY MR. MAZAROLI:
 4 Q. Can Evergreen get access to the waybill
 5 information?
 6 MR. HASIAK: If you know.
 7 THE WITNESS: I don't know.
 8 BY MR. MAZAROLI:
 9 Q. We received by telefax two documents,
 10 one -- they look very familiar -- very similar. One
 11 does not appear to have an effective date, and the
 12 other one has an effective date of July 1, 2005.
 13 Can you tell us which of these two documents pertain
 14 to Deposition Exhibit 3?
 15 A. Deposition Exhibit 3 --
 16 MR. HASIAK: Just the Bates number in the
 17 bottom there.
 18 THE WITNESS: The one at the bottom right
 19 dated 3/26/2002 would be the one that that one would
 20 pertain to.
 21 MR. MAZAROLI: All right. Ms. Reporter,
 22 would you mark this document as sent to me by fax as
 23 Exhibit 3A.
 24 (Exhibit No. 3A
 25 marked for identification.)

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1 MR. MAZAROLI: Okay. And the other
2 document which has an effective date of July 1, 2005
3 on the top right, would you mark that as Exhibit 4A,
4 Ms. Reporter.

5 (Exhibit No. 4A
6 marked for identification.)

7 BY MR. MAZAROLI:

8 Q. Mr. Hartmann, I just noticed on Exhibit 4A
9 on the bottom right there is a date of 11/8/2007?

10 A. Yes.

11 Q. That's obviously not the effective date,
12 is it, it's a printout date?

13 A. That's correct.

14 Q. So on Exhibit 3A, that date 3/26/2002,
15 that might be a printout date as well?

16 A. Yeah, I don't know.

17 Q. Okay. And these were the two Exhibit A
18 schedules referred to in Paragraph 4 of the exempt
19 rail transportation agreement marked as Exhibit 3;
20 is that correct?

21 A. That's correct.

22 Q. And these prices on the top space under
23 the three categories of cargo have been redacted due
24 to the confidentiality concern; is that correct?

25 A. That's correct.

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1 want it to move from or to.

2 Q. All right. And the shipments that are the
3 subject of this court case, let's just see here,
4 move from which of those two terminals?

5 A. They moved from the TICTF, T-I-C-T-F
6 terminal.

7 Q. It's the Evergreen terminal?

8 A. Correct.

9 Q. And that's indicated on Exhibits 8 and 9,
10 right?

11 A. Yes, sir.

12 Q. Okay. And what does T-I-C-T-F mean?

13 A. It stands for terminal island container
14 transfer facility.

15 Q. That's an Evergreen facility?

16 A. Well, it's a shared facility by multiple
17 ocean carriers, but they are one of the tenants that
18 utilize that facility.

19 Q. Which other ones -- which other multi
20 ocean carriers use them?

21 A. Well, there is terminal -- the TICTF is
22 actually the yard or the loading area.

23 Q. Okay.

24 A. So you have NY K Line using that, Hapag
25 Lloyd and Evergreen. Those are the three main ones

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1 Q. On the top of Exhibit -- Exhibits 3A and
2 4A, it states international COFC rates; do you see
3 that?

4 A. Yes, sir.

5 Q. What does COFC mean?

6 A. Container on flatcar.

7 Q. And the between points shown on each of
8 Exhibits 3A and 4A, the first category of -- under
9 the between column, it says TICTF, slash, ICTF, CA;
10 what does that mean?

11 A. That means that a shipment moving to or
12 from TICTF, which is Evergreen's on-dock marine
13 terminal, slash, and/or ICTF, which is our
14 intermodal terminal in Long Beach, the rate on that
15 line would pertain to a shipment to either of
16 those -- to or from either of those points.

17 Q. Now, how would it be determined whether it
18 moved from Evergreen's on-dock -- did you say it was
19 an Evergreen on-dock terminal?

20 A. That's correct.

21 Q. From that terminal or for the one you
22 described as Union Pacific's terminal?

23 A. We would move -- the customer would submit
24 billing to the way that they would like it to move,
25 submit rail waybill billing designating where they

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1 that I can think of. There may be more, but I'm not
2 aware of what those might be.

3 Q. And on-dock means it goes direct from the
4 ship onto the railcar?

5 A. It goes from ship to railcar within the
6 marine terminal.

7 Q. And referring to Exhibits 6 and 7, there
8 is reference under the name Evergreen America Corp
9 to shipper certified scale weights; what does that
10 mean?

11 MR. HASIAK: If you know.

12 THE WITNESS: Yeah, I don't know the
13 answer to that question.

14 BY MR. MAZAROLI:

15 Q. And there is reference further to do not
16 weigh, shipper certified scale; do you know what
17 that means?

18 A. No, sir, I don't.

19 Q. Thank you very much, Mr. Hartmann.

20 A. You're welcome. Thank you.

21 MR. GUTTERMAN: No further questions.
22 What about signature, Ray?

23 MR. HASIAK: We would waive it.

24 MR. MAZAROLI: I may want him to sign it.
25 I will let you know.

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